



Department of Consumer Affairs  
Carrie Lopez, Director

# Respiratory Care Board of California

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May 21, 2008

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Executive Officer

The Honorable Don Perata  
President Pro Tempore  
State Capitol, Room 205  
Sacramento, CA 95814

Re: SB 1526 - Support if Amended

Dear President Pro Tempore Perata:

SB 1526 proposes to establish the "certified polysomnographic technologist," as it relates to polysomnography, a subject which the Respiratory Care Board of California (Board) has reviewed for several years. We are pleased that the Legislature has become aware of the need to regulate this practice, given the recent attention to an unlicensed technician who is currently awaiting criminal proceedings for allegedly molesting several sleep patients and another known technician who was convicted of attempted murder (both in California). In addition, the need to ensure education and training of individuals practicing in this specialty is paramount for consumer protection. The Board would like to lend its support to SB 1526 if amended.

Consumer protection is the Board's highest priority. With this train of thought, the Board respectfully requests your consideration of the following amendments:

## Regulatory Body

Currently SB 1526 charges independent physicians with enforcing the provisions contained in SB 1526, with the Medical Board serving as a "reactive" agency to discipline physicians should harm occur. As a result, there is no one "clearinghouse" to determine what are acceptable or not acceptable criminal backgrounds (or rehabilitation) of applicants for employment. There is also no one agency, to receive and track complaints and make this information available to the public. The attached articles articulate the need for "licensure" to prevent sexual predators from moving from one employer to the next, as well as public outcry for access to this information.

In addition to persons with histories of criminal activity, a person found to be incompetent or unqualified will not be disciplined and will be authorized to continue to practice once he/she finds a new employer. Also, this lighter form of regulation presents concern to the provision that supervision may be by telephone or e-mail. The Board proposes a proactive measure to regulation by establishing a "registration" system under a State regulatory body that could enforce these requirements as well as publish qualified caregivers for public access.

## Trainees

SB 1526 provides that regulations shall be adopted to establish the means and circumstances in which a licensed physician and surgeon may employ trainees. However there are no provisions in the bill outlining any requirements for criminal background checks, education, training or supervision. Currently, the "trainee" job description of the sleep association provides that a trainee may provide respiratory care under the supervision of a "technician." Our concern is centered on respiratory care procedures where it takes a minimum of 24 months to educate and train

*The Respiratory Care Board  
of California's mission  
is to protect and serve the  
consumer by enforcing the  
Respiratory Care Practice  
Act and its regulations,  
expanding the delivery  
and availability of services,  
increasing public awareness  
of respiratory care as a  
profession, and supporting  
the development and  
education of all respiratory  
care practitioners.*

respiratory therapists to perform these tasks. Theoretically, a trainee with no education or experience would be working in the middle of the night with a technician not necessarily in the immediate patient care area. The Board proposes that SB 1526 be amended to require trainees to also have criminal background checks and detail the level of education and supervision.

### **Respiratory Care Exemption**

SB 1526 provides an exemption for respiratory care practitioners "working within the scope of practice of their license." Over five years ago, the American Association for Respiratory Care deemed polysomnography a sub-specialty of respiratory care. Approximately four years ago, the Commission on Accreditation for Allied Health Education Programs followed suit and established a means for accreditation of polysomnography educational programs as an add-on to respiratory care programs. While there are 80+ sleep disorders, over 90% of the time, Obstructive Sleep Apnea (OSA) is the sleep disorder diagnosed and treated which is respiratory care. Also attached, is proposed legislation from New York that not only includes an exemption for respiratory care practitioners, but also list them as an authorized source to supervise trainees working on a temporary permit. The Board requests that SB 1526 be amended to clarify that respiratory care practitioners are exempt so there is no question of whether this is within their scope of practice.

### **Home Care**

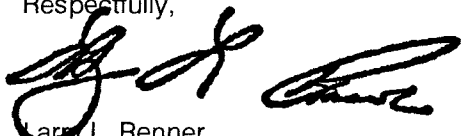
On March 13, 2008, the Centers for Medicare & Medicaid Services (CMS) expanded Medicare coverage for continuous positive airway pressure (CPAP) devices to include beneficiaries who have been diagnosed, using a home sleep test, with OSA. Medicare states up to four million Medicare beneficiaries may suffer from some form of OSA.

Last March, the Board promulgated regulations to target the fraud and abuse occurring in home care (attached). Home Medical Device Retail Facilities are licensed by the Department of Public Health and are authorized to fill prescriptions for equipment; many of which are respiratory care devices including sleep apnea monitors and CPAP devices. Regulation of HMDRFs is charged with ensuring proper devices are delivered and are kept clean. However, there are thousands of consumers receiving respiratory care treatment by delivery drivers. You will see in subdivision (b) of Section 1399.360 of the attached regulations, that unlicensed personnel are prohibited from setting up CPAPs that constitute patient care or any level of clinical assessment. However, SB 1526 circumvents this requirement as subdivision (c) of SB 1526 provides, "Notwithstanding any other provision of law, an individual ...may engage in the practice of polysomnography...."

As a result of Medicare's new policy, the number of consumers receiving sleep studies is expected to multiply ten-fold. Given the multiple problems of fraud and abuse that already exist in the home care industry, the Board respectfully requests that if a "registration" system is not established by a government agency, that certified sleep technicians be prohibited from working in the home (the Board would also be open to discussing a prohibition of home care for a period of time). Consumers receiving patient care in the home assume that caregivers are licensed and qualified. Without a means to check a single database to verify qualifications, it will be extremely difficult to differentiate from unlicensed and licensed, and now unlicensed "certified polysomnographic technologists."

We are pleased that attention has been given to the need to regulate sleep technicians. However, we believe SB 1526 as written, will only perpetuate the disparities and problems that currently exist and we respectfully request your consideration of our proposed amendments to better protect consumers. Please contact Stephanie Nunez, Executive Office at 916.323.9983 if you have any questions or would like to discuss further.

Respectfully,



Larry L. Renner  
President

Attachments

cc: The Honorable Jeff Denham  
The Honorable Mike Eng, Chair, Assembly Business & Professions Committee  
Honorable Members of the Assembly Business & Professions Committee